



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CWA/149666

PRELIMINARY RECITALS

Pursuant to a petition filed May 28, 2013, under Wis. Admin. Code § HA 3.03, to review a decision by the Bureau of Long-Term Support in regard to Medical Assistance, a hearing was held on September 12, 2013, at Milwaukee, Wisconsin following the grant of a request for a rehearing after Petitioner missed the original hearing date.

The issue for determination is whether the Division of Hearings and Appeals can order forgiveness of a cost share balance resulting from a delayed billing by the IRIS program.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Chris Sobczak of MILES and Jill Speer on behalf of
Bureau of Long-Term Support
1 West Wilson
Madison, WI

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is a participant in the IRIS program.

2. Petitioner was sent a letter dated March 28, 2013 that informed Petitioner that she had an outstanding balance due the IRIS program in the amount, per an attached ledger, of \$271.50. This balance came about because Petitioner's cost share changed as of July 2010 to \$131.13 from \$54.75 but the IRIS billing system did not immediately pick up and bill the new amount. The underpayment was discovered in a review of IRIS records, hence the March 28, 2013 letter.
3. Petitioner was sent a Notice of Decision, dated June 18, 2010, that informed her that her cost share was to increase effective July 1, 2010 to \$131.13. That notice was sent to Petitioner at the above address and contains appeal instructions. No appeal of the cost share increase was received by the Division of Hearings and Appeals.

DISCUSSION

The Include, Respect, I Self-Direct (IRIS) program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program. Those receiving Waiver benefits must contribute all income exceeding their personal maintenance allowance to their medical care. *Medicaid Eligibility Handbook*, 28.5.1.

Here Petitioner thinks it unfair to collect this past due amount. Essentially, this is an equitable argument. The Division of Hearings and Appeals does not, however, possess equitable powers. *See, e.g., Wisconsin Socialist Workers 1976 Campaign Committee v. McCann*, 433 F.Supp. 540, 545 (E.D. Wis.1977). The Division of Hearings and Appeals must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Accordingly, the Division of Hearings and Appeals does not have authority under law to perform "equity" in the manner sought.

Further, even if there were such authority I would not find for Petitioner. A Notice was issued informing of the cost share increase and it was not appealed. The payment of that cost share is required. There is no time limit for collecting the underpayment noted by Petitioner and the initial effort was under 3 years from the date of the increase; the general statute of limitations for recovery of benefits is 10 years. *See Stats.*, §49.08. While the underpayment may not have been Petitioner's fault given the billing delay by IRIS that does not mean that Petitioner has no obligation to pay it.

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals has no authority or legal basis for forgiving the underpayment of Petitioner's IRIS cost share that is the subject of this appeal.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as

"PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

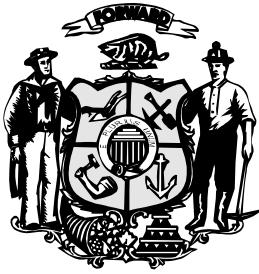
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of October, 2013

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 14, 2013.

Bureau of Long-Term Support